

U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



BRB No. 23-0288

ISAAYA ALINAITWE)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
SABRE INTERNATIONAL SECURITY)	
)	DATE ISSUED: 08/22/2024
and)	
)	
CONTINENTAL INSURANCE COMPANY)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Paul C. Johnson, Jr., District Chief Administrative Law Judge, United States Department of Labor.

Isaaya Alinaitwe, Kijebere Village, Kyenjojo District, Uganda.

Krystal L. Layher and Rebecca R. Sonne (Brown Sims), Houston, Texas, for Employer.

Before: BOGGS, BUZZARD, and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant, without representation, appeals District Chief Administrative Law Judge (ALJ) Paul C. Johnson, Jr.'s Decision and Order Denying Benefits (2020-LDA-01617) rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §§901-950 (Act), as extended by the Defense Base Act, 42

U.S.C. §§1651-1655 (DBA or Act).¹ We must affirm the ALJ’s findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3); *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant worked for Employer as a security guard in Iraq from 2008 to 2010, where he was exposed to traumatic incidents, noise from gunfire and bomb explosions, and dust and sandstorms. EX 1 at 26-29, 32-34, 49-57. After he completed his contract and returned home to Uganda, he worked as a crop trader, *id.* at 19-20, but began experiencing nightmares, flashbacks, headaches, lightheadedness, blurry vision, memory loss, hearing loss, and ringing in his ears. *Id.* at 31-35. He testified he quit his business after five months because his psychological condition affected his ability to make financial decisions. *Id.* at 19-20. Since 2011, he has not been “formally employed,” but he does help his mother with farming tasks. *Id.* at 20-21.

Claimant initially sought care for his headaches, dizziness, lightheadedness, blurry vision, memory loss, hearing loss, and ringing in his ears from a facility referred to as MEO Clinic and churches sometime in 2011 or 2012. EX 1 at 34-37, 41, 43-44. He testified his provider at MEO Clinic, “Dr. Omyedo,” told him his vision and ear issues were due to the dust and sandstorms he was exposed to in Iraq and advised him to seek medical treatment from a specialist at a referral hospital in 2013. *Id.* at 36-38. Because of his mother’s health condition, Claimant did not seek treatment from a specialist until 2019. *Id.* at 36. He underwent an audiogram at Buhinga Referral Hospital in Fort Portal on October 26, 2020,² CX 3 at 18; EX 1 at 44, and testified he takes pills and eardrops for his hearing loss. EX 1 at 46.

In 2019, Claimant sought treatment for his psychological symptoms at Mubende Regional Referral Hospital. EX 1 at 34, 38-40; CX 3 at 1-12. His provider, Ivan Mwiwa Leacky (Clinical Officer Leacky),³ diagnosed Claimant with Post Traumatic Stress Disorder (PTSD) and depression and prescribed medication. EX 1 at 38-40. Clinical

¹ This case arises within the jurisdiction of the United States Court of Appeals for the Second Circuit because the district director who filed the ALJ’s decision is in New York. 33 U.S.C. §921(c); *McDonald v. Aecom Tech. Corp.*, 45 BRBS 45 (2011).

² The audiogram report states Claimant has mild hearing loss and was exposed to noise. CX 3 at 18, 20.

³ Clinical Officer Leacky has a diploma in mental health from Butabika and is a “Principal Psychiatric [sic] Clinical Officer” at Mubende Regional Referral Hospital. CX 3 at 4-5.

Officer Leacky's handwritten treatment records contain the diagnoses, Claimant's reported symptoms, prescription medications, and treatment plan.⁴ CX 3 at 4-11. Claimant testified that during his appointments, Clinical Officer Leacky asked him a series of "test questions" about his health background and history. EX 1 at 42. He testified Clinical Officer Leacky continues to monitor his condition but has "not necessarily" recommended further treatment. Claimant stated his psychological condition has improved since he began treating with Clinical Officer Leacky, though his memory and hearing losses have persisted. *Id.* at 42-43.

On January 14, 2020, Claimant filed a claim for a psychological injury and for hearing loss. CX 1 at 2; EX 2. Employer controverted the claim, contesting timeliness under Sections 12 and 13 of the Act, 33 U.S.C. §§912, 913, and causation. EX 3. After the case was referred to the Office of Administrative Law Judges (OALJ), the parties opted for a decision on the record, 29 C.F.R. §18.70(c), and filed their respective exhibits and briefs.

On March 30, 2023, the ALJ issued his Decision and Order Denying Benefits (D&O). For purposes of timeliness, he found Claimant "knew or should have known" of the relationship between his psychological symptoms, employment, and disability "no later than 2011," and therefore concluded that compensation for Claimant's psychological injury claim was time-barred under Section 13 of the Act, 33 U.S.C. §913. D&O at 13-15.⁵ Because medical benefits are never time-barred, the ALJ addressed causation. He found Claimant invoked the Section 20(a) presumption, 33 U.S.C. §920(a), as to his alleged psychological injury and hearing loss, and Employer rebutted the presumption. After weighing the evidence as a whole, the ALJ found Claimant did not meet his burden of persuasion to establish a work-related psychological injury or hearing loss and, therefore, denied compensation and medical benefits for both alleged injuries. D&O at 16-20.

⁴ Claimant's treatment records also contain a "Medical Questionnaire" with two different handwritten dates, June 18, 2019, and July 15, 2019, and a different stamped date, July 18, 2019. The questionnaire lists Claimant's diagnoses as PTSD, moderate depression, "asciatica," and partial hearing loss and states that "conditions in the war zone, traumatic experiences caused the symptoms." CX 3 at 2-3. At his deposition, Claimant testified Clinical Officer Leacky filled out the questionnaire. EX 1 at 45-46.

⁵ Regarding his hearing loss claim, the ALJ determined Claimant timely provided notice and timely filed that claim. D&O at 15.

Claimant, without the assistance of counsel, appeals the ALJ's decision.⁶ Employer responds, urging affirmance.

If a claimant invokes the Section 20(a) presumption by producing some evidence or allegation of a harm and working conditions that could have caused, aggravated, or accelerated the harm, as here, his injury is presumed to be work-related. *Rose v. Vectrus Systems Corp.*, 56 BRBS 27, 37 (2022) (en banc), *appeal dismissed*, (M.D. Fla. Aug. 24, 2023); *see, e.g., American Stevedoring Ltd. v. Marinelli*, 248 F.3d 54, 64-65 (2d Cir. 2001). Once invoked, the burden shifts to the employer to rebut the presumption by producing "substantial evidence" showing workplace conditions did not cause, contribute to, or aggravate the claimant's condition. *Rainey v. Director, OWCP*, 517 F.3d 632, 637 (2d Cir. 2008); *O'Kelly v. Dep't of the Army/NAF*, 34 BRBS 39 (2000). If the employer rebuts the Section 20(a) presumption, it no longer applies, and the issue of causation must be resolved on the record as a whole, with the claimant bearing the burden of persuasion. *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267 (1994); *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996).

To rebut the Section 20(a) presumption, Employer relied on the opinions of its clinical neuropsychology expert, Dr. Robert Collins, EXs 6, 7, and its audiology expert, Dr. Laurie S. Hebert, EXs 9, 10. Dr. Collins conducted a psychological evaluation of Claimant via telehealth platform, during which he clinically interviewed Claimant and administered various self-report and symptom validity tests. Based on the evaluation, clinical interview, and records reviewed, Dr. Collins opined a "psychological diagnosis cannot be supported." EX 6 at 8 (emphasis in original). Dr. Hebert conducted a peer review of Claimant's audiogram and hearing loss treatment records⁷ and opined Claimant's hearing loss "is less likely than not related to noise exposure during his employment." EX 9 at 2.

As Dr. Collins's and Dr. Hebert's opinions constitute substantial evidence to rebut the presumption by casting doubt on the causal connection between Claimant's employment and his alleged injuries, *Rainey*, 517 F.3d at 637, we affirm the ALJ's finding that Employer met its burden and rebutted the Section 20(a) presumption as to Claimant's alleged psychological injury and hearing loss. As the presumption dropped from the case,

⁶ Claimant was represented by counsel throughout the OALJ proceedings and when he initiated his appeal. However, his counsel withdrew during the pendency of his appeal, and Claimant has not retained substitute representation.

⁷ Dr. Hebert did not physically examine Claimant.

the ALJ appropriately proceeded to weigh the evidence as a whole with Claimant bearing the burden of persuasion. *Greenwich Collieries*, 512 U.S. 267; *Santoro*, 30 BRBS 171.

To support his claim for a psychological injury, Claimant relied on the opinion of Clinical Officer Leacky, whom he began seeing in 2019 and who diagnosed him as having PTSD and depression. CX 3 at 1-12. To support his claim for hearing loss, Claimant relied on the opinion of his other provider, “Dr. Omyedo,” whom he began seeing sometime in 2011 or 2012 and who told him his ear issues were due to the dust and sandstorms to which he was exposed in Iraq, CX 3 at 19-25; EX 1 at 34-38, as well as an audiogram report stating he has mild hearing loss and was exposed to noise. CX 3 at 16-18.

The ALJ permissibly credited Dr. Collins’s neuropsychological opinion over that of Claimant’s provider, Clinical Officer Leacky, because Clinical Officer Leacky did not explain how he arrived at his PTSD and depression diagnoses or how Claimant’s reported symptoms established the diagnoses. The ALJ found Dr. Collins’s opinion – that Claimant has no psychological diagnosis – was based on “far more extensive testing” and “extensive occupational, family, medical, and psychiatric histories” from Claimant. He additionally found Dr. Collins’s credentials superior to Clinical Officer Leacky’s. Given Dr. Collins’s “superior credentials” and “more thorough evaluation,” and Clinical Officer Leacky’s “neither documented nor reasoned” opinion, the ALJ found Claimant failed to carry his burden of persuasion and, therefore, denied benefits for his alleged psychological injury. D&O at 17-18.

With respect to Claimant’s alleged hearing loss, the ALJ permissibly credited Dr. Hebert’s audiological opinion, that Claimant did not suffer work-related hearing loss, over what the ALJ found were Claimant’s “entirely unreliable medical records” and an “unreliable” audiogram report. D&O at 19. As the ALJ observed, the audiogram does not show who conducted it, that individual’s qualifications, the conditions under which it was administered, or where Claimant was exposed to noise. CX 3 at 16-18. By contrast, the ALJ found Dr. Hebert’s report and analysis “thorough” and her qualifications “superb.” D&O at 19-20. Upon weighing Dr. Hebert’s “superior credentials” and “thorough report and analysis” against Claimant’s “deficient and unreliable audiogram” and “subjective complaints of hearing loss,” the ALJ determined Claimant did not establish by a preponderance of the evidence that he has work-related hearing loss. He therefore denied benefits for Claimant’s alleged hearing loss.

Because the ALJ’s credibility determinations are not “inherently incredible or patently unreasonable,” *Cordero v. Triple A Mach. Shop*, 580 F.2d 1331, 1335 (9th Cir. 1978), and his weighing of the evidence is rational and supported by substantial evidence,

Carswell v. E. Pihl & Sons, 999 F.3d 18, 27 (1st Cir. 2021), *cert. denied*, 142 S. Ct. 1110 (2022), we affirm the denial of disability compensation and medical benefits.⁸

Accordingly, we affirm the ALJ's Decision and Order Denying Benefits.

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

⁸ Because we affirm the ALJ's finding that Claimant did not suffer a work-related psychological injury, we need not address his finding that Claimant did not timely file his psychological injury claim under Section 13 of the Act, 33 U.S.C. §913.